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No. 07-558

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IN THE

Supreme Court of the United States

CATHERINE R. MAFFEI, individually, and CATHERINE R. MAFFEI and MAUREEN, as trustees of the WALDO M. MAFFEI REVOCABLE TRUST, and EILEEN HANAFIN,

Petitioners,

v.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

REPLY BRIEF

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The Petitioners are submitting this Reply Brief to respond to the following new material or arguments which the Roman Catholic Archdiocese of Boston ("RCAB") in its Brief in Opposition to the Petition for a Writ of Certiorari:

(1) Additional facts which the RCAB submitted in its Opposition;

(2) The Opinion of the Massachusetts Supreme Judicial Court does not conflict with the decisions of other States concerning the Trust and Confidence which Members can Repose in the Clergy;

(3) The Decision of the Second Circuit Court of Appeals in *Martinelli v. Bridgeport Roman Catholic Archdiocese*, 196 F.3d 409 (2d Cir. 1999), which permitted the Court to consider religious teachings and tenets, is limited to a factual situation involving abuse; and

(4) That the United States Supreme Court need not make a ruling as to the rights of donors to religious organizations, as the Commonwealth of Massachusetts Attorney General has the authority to enforce the due application of funds given to public charities, pursuant to M.G.L.c. 12, Section 8.

I. The Facts.

The RCAB states, on page 3 of its Opposition, that its facts are taken from "uncontested material of record, viewed in the light most favorable to the Petitioners," and that the evidence in the summary judgment record consisted of the Petitioner's Verified Complaint and the Statement under Oath of Catherine Maffei. (Opposition, page 3). In fact, the evidence in the Summary Judgment record consisted of the Verified Complaint, which included sixteen exhibits, and Affidavits of Eileen Hanafin, and two Parishioners of St. Bernard's Parish of Newton, Massachusetts, who averred to the facts concerning the visit of Reverend Mark O'Connell to St. Bernard's Parish, set forth on page 14 of the Petition.

While the RCAB states that the facts it sets forth are "viewed in the light most favorable to the Parishioners," the RCAB nevertheless attempts to contradict the Petitioner's averment in the Verified Complaint that the RCAB prepared the deed and that the Maffeis were not represented at the signing of the Deed. The RCAB does so by stating, in its Opposition, that Catherine Maffei stated in her Statement under Oath that one of her neighbors prepared the deed. (Opposition, p. 5, fn. 9). The RCAB does not mention that two of the exhibits set forth on the Verified Complaint were instructions of the RCAB's Chancellor to Reverend Lord directing him to contact the RCAB's attorney to prepare the legal documents.

Finally, the RCAB refers to statistics concerning the attendance at St. James in January, 2004, at the time of devising the "Reconfiguration Plan." (Opposition, p. 9).

However, these statistics were compiled almost six months after the RCAB had replaced St. James's Pastor with an Administrator.

II. The Opinion of the Supreme Judicial Court Conflicts with Opinions of Other State Courts.

The RCAB contends that the Opinion of the Supreme Judicial Court in *Maffei, et al. v. Roman Catholic Archdiocese of Boston*, 449 Mass. 235 (2007), does not conflict with decisions of other state courts, which were cited in the Petition as permitting consideration of the "trust and confidence" which a follower reposes in a member of the Clergy, in determining whether there has been a violation of the "trust and confidence" in the follower's providing a donation or gift. (the discussion of these cases is set forth in the Petition, pages 19-22).

The RCAB attempts to discourage the application of these cases in two ways. The RCAB first states that the Supreme Judicial Court distinguished these cases as involving "'. . . repeated, affirmative false statements by clergy that would constitute fraud apart from any religious affinity between the parties.'" (Opposition, page 9, citing from *Maffei*, page 249, fn. 24; Petition Appendix ("App."), 22a). However, none of the decisions of the other state courts limit their holdings to any arguably "aggravated" facts. Moreover, there are certain facts involved in the present cases, such as the Maffeis' devotion of over fifty years to St. James the Great Church, which are also unique.

The RCAB then argues that most of the decisions of the other state courts predate, and are rendered as questionable authority, by this Court's decision,

Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696 (1976), which the RCAB construes as prohibiting a state court from considering the relationship and trust between a member of the Clergy and its follower. (Opposition, pages 11-13). However, the *Serbian E. Orthodox* decision does not prohibit the consideration of the relationship and the trust and confidence which a follower reposes in a member of the Clergy; the decision simply states that where a matter is properly decided by an Ecclesiastical tribunal, a civil court must accept the decision as binding. *Serbian East Orthodox*, at pages 724-725.

The decision of the Massachusetts Supreme Court is fundamentally at odds with the decisions of the other State Courts. This Court should allow the Petition in order to rule upon both the Supreme Judicial Court's misapplication of the *Serbian East Orthodox* decision and the conflict between the *Maffei* decision and the decisions of other State Courts concerning whether a civil court can consider the "trust" which a follower reposes in a member of the Clergy in determining whether the "trust" has been violated with respect to a donation or gift.

III. The RCAB Misconstrues the Applicability of the Decision of the Second Circuit of *Martinelli v. Bridgeport Roman Catholic Diocesan Corporation.*

The RCAB correctly states, in its subtitle, that the Petitioners rely on the Decision of the Second Circuit Court of Appeals in *Martinelli v. Bridgeport Roman Catholic Archdiocese*, 196 F.3d 409 (2d Cir. 1999), as

ruling that the First Amendment does not prevent courts from deciding secular civil disputes involving religious institutions when and for the reason that they require reference to religious matters. *Martinelli*, at page 431. (*See* Opposition, page 13).

The RCAB, however, then cites the facts of the *Martinelli* case as involving a physically abusive relationship between a member of the Clergy and a follower, as a reason to refuse to concede the decision's authority. However, the *Martinelli* decision's discussion of the admissibility of the specific religious tenets makes no mention of limiting the admissibility to such circumstances.

IV. This Court Should Determine Whether Donors to Religious Institutions have the Same Rights as Donors to Other Charitable Institutions.

The RCAB justifies its contention that this Court should not determine the rights of Donors to Religious Institutions, by stating that the State Attorney General can seek to enforce gifts to religious or charitable institutions. The RCAB specifically refers to M.G.L.c. 12, Section 8, which authorizes the Attorney General to enforce the due application of funds. (Opposition, page 15). The Supreme Judicial Court, in the *Maffei* decision, held that this statute did not preclude the Plaintiffs from filing their own action. *Maffei*, pages 244-246 (App., 15a-18a). Our legal system is built upon the premise that one should be able to enforce one's own rights. Secondly, even as to statutes which provide for the government to have civil enforcement authority, there is often a provision which permits an aggrieved person to seek relief.

See 96 U.S.C. § 1964, providing for a private person to seek redress for a violation of the Racketeer Influenced and Corrupt Organizations Act.

Furthermore, the same basic issues involved in this Petition, which are whether the "trust and confidence" which a follower reposes in a member of the Clergy, exist regardless of whether enforcement is sought directly by the Donor or by the Attorney General.

With respect to the claim of Eileen Hanafin, who made her donation in 2002 on the representation that the donation was necessary to maintain St. James Church ". . . now and in the future . . . ," the RCAB also contends that the Petitioners have failed to address that the SJC ruled that there was no evidence (1) that the pastor of the parish used Ms. Hanafin's donation for anything other than the stated purpose and (2) that the pastor failed to exercise reasonable care or competence in using the phrase "for the future" while soliciting funds. (Opposition, page 15). However, one must first consider that the claim was based on the averment that the RCAB had the obligation to tell a Parishoner Donor that St. James could be suppressed at any time (*Maffei*, p. 237, App. to Petition, 3a). One must then consider that the SJC, based on its consideration of the First Amendment, could not consider issues of Canon law or whether a member of the clergy had any obligation to inform a Parishoner about Canon law. (*Maffei*, p. 244, App. to Petition, 14a). Then Archbishop O'Malley, at the time he denied the Parishioners of St. James Appeal of the Suppression of the Church, specifically stated that St. James ". . . has long been seen as a place which could possibly close . . ." Whether Reverend Vartzelis knew that closure of St. James was being considered, the RCAB knew, but was nevertheless issuing Fliers for the

Promise for Tomorrow Fund representing that St. James was a "thriving" Parish. Accordingly, if the SJC is in error concerning its construction of First Amendment law, and that there was an obligation of the RCAB to notify a Parishioner that the Church was under consideration for possible closure when soliciting contributions to maintain the Church "... now and in the future ...", then Eileen Hanafin's claim would be revived.

CONCLUSION

The RCAB contends that this Court should not grant the Petition to Review the decision of the Supreme Judicial Court, which essentially states that in the absence of "repeated, affirmative" false statements, there can be no finding of "trust and confidence" by which an aggrieved follower can seek relief for the misapplication of his or her gifts. This Court should grant the Petition and definitively state whether the First Amendment commands this result.

Respectfully submitted,

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